



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 202, 216, 217, 225, 234 and 235

[Docket DARS-2019-0008]

RIN 0750-AJ32

**Defense Federal Acquisition Regulation Supplement: Use of
Fixed-Price Contracts (DFARS Case 2017-D024)**

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule; extension of comment period.

SUMMARY: DOD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the National Defense Authorization Act for Fiscal Year 2017 that require review and approval for certain cost-reimbursement contract types at specified thresholds and established time periods and the use of firm fixed-price contract types for foreign military sales unless an exception or waiver applies. The comment period on the proposed rule is extended 14 days.

DATES: The comment period for the proposed rule published on April 1, 2019 (84 FR 12179), is extended. Submit comments by June 14, 2019.

ADDRESSES: Submit comments identified by DFARS Case 2017-D024, using any of the following methods:

- o Federal eRulemaking Portal: <http://www.regulations.gov>. Search for "DFARS Case 2017-D024." Select "Comment Now" and follow the instructions provided to submit a comment. Please include "DFARS Case 2017-D024" on any attached documents.
- o Email: osd.dfars@mail.mil. Include DFARS Case 2017-D024 in the subject line of the message.
- o Fax: 571-372-6094.
- o Mail: Defense Acquisition Regulations System, Attn: Ms. Kimberly Bass, OUSD(D&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Bass, telephone 571-372-6174.

SUPPLEMENTARY INFORMATION:

I. Background

On April 1, 2019, DoD published a proposed rule in the Federal Register at 84 FR 12179 to implement the requirements of sections 829 and 830 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328). Section 829 requires

contracting officers to first consider fixed-price contracts, to include fixed-price incentive contracts, when determining contract type and to obtain approval from the head of the contracting activity for—

- Cost-reimbursement contracts in excess of \$50 million to be awarded after October 1, 2018, and before October 1, 2019; and
- Cost-reimbursement contracts in excess of \$25 million to be awarded on or after October 1, 2019.

Section 830 provides requirements, exceptions, and waiver authority for the use of firm-fixed-price contracts for foreign military sales (FMS). It requires contracting officers to use firm fixed-price contracts unless specified exceptions or a waiver applies. Contracting officers are required to use a different contract type if the FMS customer has established in writing a preference for a different contract type or has requested in writing that a different contract type be used for a specific FMS. The waiver authorizes contracting officers the ability to use other than firm-fixed-price contract type on a case by case basis when determined it is in the best interest of the United States and American taxpayers.

The comment period for the proposed rule is extended 14 days, from May 31, 2019, to June 14, 2019, to provide additional time for interested parties to comment on the proposed DFARS changes.

**List of Subjects in 48 CFR Parts 202, 216, 217, 225, 234, and
235**

Government procurement.

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System.*

[FR Doc. 2019-11183 Filed: 5/28/2019 8:45 am; Publication Date: 5/29/2019]